

Office of the Secretary, HUD

§ 24.110

- (1) The agency head, or
- (2) An official designated by the agency head.

Suspension. An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is *suspended*.

Ultimate beneficiaries. Ultimate beneficiaries of HUD programs include, but are not limited to, subsidized tenants and subsidized mortgagors such as those assisted under Section 8 Housing Assistance Payments Contracts, by Section 236 Rental Assistance, or by Rent Supplement payments.

Voluntary exclusion or voluntarily excluded. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

[53 FR 19182 and 19204, May 26, 1988, as amended at 53 FR 19182, May 26, 1988, 53 FR 30051, Aug. 10, 1988; 60 FR 33040, 33048, June 26, 1995]

§ 24.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as *covered transactions*.

(1) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal

agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(A) Specially designated transactions are:

(1) Transactions regulated by the Interstate Land Sales Act (15 U.S.C. 1701);

(2) Transactions regulated by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401);

(3) Any procurement transaction between HUD and a person.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently \$25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

- (1) Principal investigators.
- (2) Providers of federally-required audit services.
- (3) Bonding companies;
- (4) Borrowers;
- (5) Purchasers of a property with a HUD-insured or Secretary-held mortgage;
- (6) Recipients under HUD assistance agreements;
- (7) Ultimate beneficiaries of HUD programs;
- (8) Fee appraisers and inspectors;
- (9) Real estate agents and brokers;
- (10) Management and marketing agents;
- (11) Accountants, consultants, investment bankers; architects, engineers,

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attorneys and others in a business relationship with participants in connection with a covered transaction under a HUD program;

(12) Contractors involved in the construction or rehabilitation of properties financed by HUD, with HUD insured loans, or acquired properties including properties held by HUD as mortgagee-in-possession;

(13) Closing agents;

(14) Turnkey developers of projects financed with or insured by HUD;

(15) Title companies;

(16) Escrow agents;

(17) Project owners;

(18) Administrators of nursing homes and projects for the elderly financed or insured by HUD;

(19) Developers, sellers or owners of property financed with loans insured under title I or title II of the National Housing Act; and

(20) Employees or agents of any of the above.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtler awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(3) *Other exceptions.* (i) Sanctions against participants whose only involvement in HUD programs is as ultimate

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beneficiaries, such as subsidized tenants and subsidized mortgagors, may be taken only upon commission of one of the offenses set forth in § 24.305(a), unless the participant has otherwise been debarred or suspended by another Federal agency.

(ii) Sanctions under this part against mortgagees and lenders approved by HUD to participate in Federal Housing Administration programs may be initiated only with the approval of the Mortgagee Review Board.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," § 24.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 24.110(a). Sections 24.325, "Scope of debarment," and 24.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* In accordance with E.O. 12689 and section 2455 of Public Law 103-355, any debarment, suspension, proposed debarment or other governmentwide exclusion initiated under the Federal Acquisition Regulation (FAR) on or after August 25, 1995 shall be recognized by and effective for Executive Branch agencies and participants as an exclusion under this regulation. Similarly, any debarment, suspension or other governmentwide exclusion initiated under this regulation on or after August 25, 1995 shall be recognized by and effective for those agencies as a debarment or suspension under the FAR.

(d) These regulations also apply to all persons who have participated, are currently participating or may reasonably be expected to participate in Federal procurement programs. For purposes of these regulations, such persons will be referred to as *contractors* and

such transactions will be referred to as *procurement contracts*. The consequences of a debarment or suspension as set forth in § 24.200 apply to contractors in Federal procurement programs, and §§ 24.325 and 24.420 govern the extent to which a specific contractor or its organizational elements would be included within a debarment or suspension action.

(e) *Retroactivity*. Limitations on participation in HUD programs proposed or imposed prior to the effective date of these regulations under an ancillary procedure shall not be affected by this part. This part shall apply to sanctions initiated after the effective date of these regulations (October 1, 1988) regardless of the date of the cause giving rise to the sanction.

[53 FR 19182 and 19204, May 26, 1988, as amended at 53 FR 19183, May 26, 1988, 53 FR 30051, Aug. 10, 1988; 60 FR 33041, 33048, June 26, 1995; 62 FR 20081, Apr. 24, 1997]

§ 24.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

[53 FR 19182 and 19204, May 26, 1988, as amended at 60 FR 33048, June 26, 1995]

Subpart B—Effect of Action

§ 24.200 Debarment or suspension.

(a) *Primary covered transactions*. Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the Executive Branch of the Federal Government for the period of their debarment, suspension, or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, no agency shall enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to § 24.215.

(b) *Lower tier covered transactions*. Except to the extent prohibited by law, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 24.110(a)(1)(ii)) for the period of their exclusion.

(c) *Exceptions*. Debarment or suspension does not affect a person's eligibility for—

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and